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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,217	12/15/2003	Carl Young	G08.150/U	7693

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BUCKLEY, MASCHOFF, TALWALKAR LLC
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EXAMINER

PLUCINSKI, JAMISUE A

ART UNIT	PAPER NUMBER
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3629

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/737,217	YOUNG ET AL.	
	Examiner	Art Unit	
	Jamisue A. Plucinski	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In response to reply received 11/13/06.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 2, 4-10, 15 and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. An invention, which is eligible for patenting under 35 U.S.C. § 101, is in the “useful arts” when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result. The fundamental test for patent eligibility is thus to determine whether the claimed invention produces a “useful, concrete and tangible result.” The test for practical application as applied by the examiner involves the determination of the following factors:

- (a) “Useful” - The Supreme Court in *Diamond v. Diehr* requires that the examiner look at the claimed invention as a whole and compare any asserted utility with the claimed invention to determine whether the asserted utility is accomplished.

Applying utility case law the examiner will note that:

- i. the utility need not be expressly recited in the claims, rather it may be inferred.
- ii. If the utility is not asserted in the written description, then it must be well established.

(b) "Tangible" - Applying *In re Warmerdan*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed.

Cir. 1994), the examiner will determine whether there is simply a mathematical construct claimed, such as a disembodied data structure and method of making it.

If so, the claim involves no more than a manipulation of an abstract idea and therefore, is nonstatutory under 35 U.S.C. § 101. In *Warmerdam* the abstract idea of a data structure became capable of producing a useful result when it was fixed in a tangible medium, which enabled its functionality to be realized.

(c) "Concrete" - Another consideration is whether the invention produces a

"concrete" result. Usually, this question arises when a result cannot be assured.

An appropriate rejection under 35 U.S.C. § 101 should be accompanied by a lack of enablement rejection, because the invention cannot operate as intended without undue experimentation.

5. Claims 1, 2, 4-10, 15 and 16 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. Specifically:

6. In Claims 1, 2, 4-10, 15 and 16, the ambiguities cited would make it impossible for the process to be repeatable or "concrete." In other words, different users would come up with different responses.

7. As per Claims 1, 2, 4-10, 15 and 16, it appears that the method/system/program code is attempting to take in information from a news feed or a government agency, and relate security risks to an element based on the hierarchical relationship of elements. The specification lacks a description on how the information from the news feed or government agency is manipulated and related to the security risk. What criteria are used to determine if it is a security risk and if

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the security risk is to a particular resource in a facility. Therefore without any teaching of how the data is taken in and the steps taken to relate them to elements (what does the computer do to the data to relate them to the selected elements), then the information input and the results generated in terms of the security risks, are subjective to the user, and if the user perceives it to be a threat. Therefore the method/system/program code is not repeatable, based on subjective information and would appear to be an attempt to patent an abstract idea not a “concrete” process. Furthermore the dependent claims relate the harm using a “subjective quantifier”. Which clearly states the harm is subjective, and does not produce a tangible/repeatable/concrete result.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 1, 2, 4-10, 15 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite a “computer-implemented” method, which receives information from a government agency or news feed. The specification is silent as to how the computer takes in this information, and what steps are used to relate this information to security risks of hierarchical elements. The specification is silent as to how the data is being manipulated to relate the live data to security

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risk. Therefore subjective to the user, and therefore one of ordinary skill in the art would not be able to proactive the invention without undue experimentation.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claim 4 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Claim 4 recites the limitation "the element selected" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is unclear if this is the first element or the second element.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beverina et al. (US 2001/0027388) in view of Zimmers et al. (US 2005/0013417).

15. With respect to Claims 1, 15, 16: Beverina discloses the use of a computer system with a computer implemented method for managing security risks (see abstract) which uses a computer executable code (paragraph 0011) to perform the following steps:

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- a. Setting a hierarchical relationship between two or more elements where the first element is a facility and the second element is a resource located within the facility (See Figures 7, 8 and 15, with corresponding detailed description, and paragraphs 0015, 0078, 0079 and 0110),
 - b. Receiving an indication of a security risk of one or more of the elements (See Figures 8 and 15, paragraph 0011),
 - c. Receiving selection of a first element and a second element (See Figure 15, Beverina teaches the Risk assessment to Ft. Belvoir, and to a building at Ft. Belvoir, which has a hierarchical relationship); and
 - d. Transmitting a description of the security risk as it relates to the element selected based on hierarchical relationship and indication of security risk (See Figures 15 and 16, paragraph 0012);
 - e. Allowing a user to traverse between the hierarchical elements (Figure 23, discloses user allowing to determine Building Damage, second element, as well as geographic effects, which is considered to be more a facility or first element.)
16. Beverina however, discloses the security risks are situational risks, fails to disclose the information related to the security risk is in real-time and is from a government agency or a news feed. Zimmers discloses the use of a real time weather feed, which the examiner considers to be a type of news feed, that is fed into a system and element information related to the risk are gathered and outputted based on facilities (See abstract, and Figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Beverina, to include the informational information/news feed of Zimmers, in order to provide

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emergency information to persons needing to be notified of such information, and individuals can be notified of emergency that directly threatens or of interest to him or her. (See Zimmers, pages 1 and 2)

17. With respect to Claim 2: See Beverina Figure 16 and paragraph 0106.
18. With respect to Claim 4: See Beverina Figures 15, 16, 23 and 24.
19. With respect to Claim 5: the limitation of the security risk comprising misappropriation of information is deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The steps of transmitting security risks would be performed the same regardless of what type of threat the security risk is based on. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
20. With respect to Claim 6: See Beverina Figure 23, paragraphs 0013 and 0096.
21. With respect to Claim 7: See Beverina paragraphs 0174, 0175 and 0209-0222.
22. With respect to Claim 8: See Beverina Figures 21 and 40, paragraph 0085.
23. With respect to Claim 9: See Beverina Figures 15 and 19.
24. With respect to Claim 10: See Beverina Paragraph 0198.

Response to Arguments

25. Applicant's arguments filed 11/13/06 have been fully considered but they are not persuasive.

26. With respect to Applicant's argument regarding the 101 rejection: The applicant's have argued that the claimed steps of setting, receiving and transmitting are concrete and that the "result" as argued by the examiner is not claimed by the applicant. Whereas, the mere physical steps of setting, receiving and transmitting information may be concrete, however it is the information which is received and transmitted that the examiner considers to be non-concrete and subjective to the user. The claim states "transmitting.... the digital data descriptive of the security risk as it relates to the selected element based on the hierarchical relationship of the first or second element". The digital data that is received is received "from the government agency or newsfeed... is descriptive of the security risk." The digital data that is received is not specific to the selected element by is general information which is received about te security risk. Therefore there must be some manipulation of the data in order for the digital data to be transmitted "as it relates to the selected element based on the hierarchical relationship." Therefore without any guidance on how the data is specifically manipulated to relate it to the selected element based on the hierarchical relationship, as claimed, then how it is related is subjective to the user and whether the user feels it is a security risk. For example, as requested by the applicant, if a newsfeed indicates a snow storm is approaching a major metropolitan area and is expected to have accumulation of 4-6 inches, one user, from New York, may say this is not significant snowfall, and may say there will not be any economical harm to a business due to the fact that people will not be affected by that little of snow and will continue with their lives as normal, where as another user, from Los Angeles, may say this is a significant accumulation which will cause people to stay indoors and therefore cause economical harm to a business. Therefore, whether something is a security risk and is based on user opinion and therefore subjective a user

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who relates the received digital data and relates it to the selected element based on the hierarchical relationship and is based on user opinion and therefore considered to be subjective.

27. The fact that data is inputted, manipulated then outputted is not subjective. It is the type of data that is inputted, and how it is turned into the outputted information that is considered to be subjective. It is based on opinion on what one would consider to be a security risk, due to the fact that the information received is not the same information that is transmitted, it is manipulated somehow within the method, and it is the manipulation that is considered to be subjective. Therefore rejection stands as stated above.

28. With respect to Applicant's arguments that the recitation of a "subjective quantifier" does not render the concrete, repeatable and tangible process subjective: However, in the claims the "subjective quantifier" is that which is outputted, and therefore the result which is transmitted. Therefore the result would be subjective, as claimed, and therefore the claim is considered to be non-repeatable. The rejection stands as stated above.

29. With respect to Applicant's argument that Beverina does not teach the specific step of "setting" a hierarchical relationship. Beverina discloses the use of a hierarchical relationship, between areas, buildings and floors. Beverina, in Figure 7, with corresponding detailed description, discloses the user builds the site, including building and floors, therefore the examiner considers this to be in essence "setting" the hierarchical relationship, cause the suer specifies or builds the site. Beverina may not specifically use the term "setting the hierarchical" relationship, but as previously pointed out by the examiner Beverina discloses using relationships between areas, buildings and floors, therefore discloses hierarchical relationships, and Beverina discloses the site is built, and outlined by the user, which the examiner considers to

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be “setting”, therefore arguments are not considered to be persuasive and rejections stand as stated above.

30. Applicant has argued all other rejections based on the fact that Beverina does not disclose the “setting” step. The examiner considers Beverina to disclose this, therefore arguments are not considered to be persuasive and rejections stand as stated above.

Conclusion

31. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

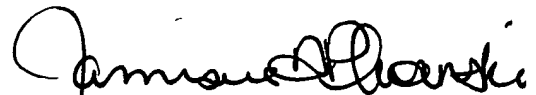
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed; and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Plucinski whose telephone number is (571) 272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jamisue Plucinski
Patent Examiner
Art Unit 3629